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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

LOUISIANA PUBLIC SERVICE COMMISSION, *Petitioner*

v.

FEDERAL POWER COMMISSION, UNITED GAS PIPE LINE COMPANY, WILLMUT GAS AND OIL COMPANY, *Respondents*

LOUISIANA GAS SERVICE COMPANY, ET AL., *Petitioners*

v.

FEDERAL POWER COMMISSION, WILLMUT GAS AND OIL COMPANY, UNITED GAS PIPE LINE COMPANY, *Respondents*

On Petitions for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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REPLY OF RESPONDENT WILLMUT GAS AND OIL COMPANY IN OPPOSITION TO PETITIONS FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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COUNTERSTATEMENT OF QUESTION PRESENTED

Where natural gas certificated by the Federal Power Commission for transportation and sale in interstate commerce is being transmitted by a natural gas company through its integrated interstate pipeline system

for sale in interstate commerce in other states, is a sale from the interconnected facilities of the system of a portion of the gas for resale and consumption in the state where the gas is produced a "sale in interstate commerce of natural gas for resale" within the meaning of the Natural Gas Act?

COUNTERSTATEMENT OF THE CASE

These cases are here on petitions for certiorari to review the decision of the United States Court of Appeals for the Fifth Circuit in *Louisiana Public Service Commission, et al.* v. *Federal Power Commission, et al.,* 359 F. 2d 525 (decided April 6, 1966), which affirmed opinions and orders of the Federal Power Commission holding that certain sales of natural gas by United Gas Pipe Line Company from its integrated interstate pipeline system for resale within the State of Louisiana in which the gas is produced are subject to that Commission's regulatory jurisdiction. The Commission's Opinions and Orders Nos. 401, and 401-A (affirming on Rehearing Opinion No. 401) are reported at 30 F.P.C. 560 and 31 F.P.C. 1152, respectively, and were issued in Docket No. CP62-161, a proceeding instituted on a petition of United Gas Pipe Line Company for a declaratory order to resolve a jurisdictional dispute arising from the Louisiana Public Service Commission's assertion of jurisdiction over these sales which were being regulated by the Federal Power Commission.[1]

---

[1] Hereinafter Louisiana Public Service Commission will be referred to as "Petitioner", "Louisiana Commission", or "PSC"; the Federal Power Commission as "Commission" or "FPC"; United Gas Pipe Line Company as "United"; and Willmut Gas and Oil Company as "Willmut".

The sales in question are made by United in the so-called Florida Parishes of Louisiana, an area bounded by Lake Pontchartrain on the South, the Mississippi River on the West, and the State of Mississippi on the North and East. United has been serving this area at wholesale since the passage of the Natural Gas Act in 1938 at rates filed with and regulated by the Federal Power Commission. On February 5, 1962, however, PSC issued an order directing United to thereafter charge its lower Louisiana intrastate rate applicable to its non-jurisdictional New Orleans Zone. Faced with conflicting jurisdictional claims of two regulatory bodies, United obtained an order from a Louisiana court restraining the PSC from enforcing its order, and then sought to resolve the dispute by petitioning the Federal Power Commission to institute the declaratory order proceeding leading to the orders affirmed by the Fifth Circuit.

The Facts of Record

The factual record developed before the FPC consists entirely of evidence adduced by United and is uncontroverted, as are the Commission's findings of fact based thereon. A "natural gas company" as defined by Section 2(6) of the Act (15 U.S.C. § 717a(6), United operates one of the largest interstate pipeline systems in the United States. Its facilities reach into all five of the Gulf States of Louisiana, Texas, Mississippi, Alabama, and Florida, and form a service area roughly rectangular in shape, extending approximately 800 miles east and west and 400 miles north and south. From large, committed reserves of gas located in Louisiana, Texas, Mississippi, and the offshore Continental Shelf in the Gulf of Mexico, United serves its scattered markets in this five-state area by means of

an extensive and intricate network of interconnected pipeline facilities. Besides making both wholesale and retail sales to distributors and industries for ultimate consumption within its service area, United also transports and sells a substantial volume of gas to several other interstate pipeline systems for subsequent transportation to and resale in the midwestern, southeastern and northeastern parts of the United States. In addition, United also operates so-called intrastate facilities completely separate from its interstate system, which are not subject to the jurisdiction of the FPC, and are not in issue here.

The area here in question is served from one or both of two large diameter, high pressure lines which are interconnected with, and constitute a part of United's integrated interstate pipeline system. One of these, the 30 inch Kosciusko line, is a major artery of the system, extending from points in the Gulf off the coast of Louisiana, northeasterly through Napoleonville, Louisiana into Mississippi where it terminates at Kosciusko. This line, which is supplied from both offshore and onshore Louisiana fields, serves distributor and industrial customers both in the Florida Parishes area and in the State of Mississippi. But in terms of volume, its major function is the transportation of large quantities of gas into Mississippi for delivery and resale at Kosciusko to Texas Eastern Transmission Corporation and Southern Natural Gas Company, which in turn transport the gas for resale to markets in the southeastern and northeastern sections of the country. The other line, the so-called Lirette line, from which some of the Florida Parishes towns are served, extends from onshore fields located near Lirette, in southern Louisiana, in an east-northeasterly

direction across Lake Pontchartrain into Mississippi and Alabama where it terminates at Mobile. This line constitutes the primary facility by which United serves its wholesale and industrial markets located in southern Mississippi, Alabama and the northern panhandle of Florida.[2]

Those communities not served directly from the Kosciusko or Lirette line are located on a lower pressure line extending southward from Mississippi to a point north of Lake Pontchartrain where it curves westward and then northward, forming a loop connected through other facilities at one end to the Kosciusko line in Mississippi, and at the other to the Kosciusko line, near Montpelier in Louisiana. The Lirette line is also connected to the bottom of this loop by means of a short lateral (R. 830). United's flexibility in utilizing these facilities to serve the requirements of the towns here involved was accurately and concisely summarized by the Commission as follows (R. 830-831):

> "Prior to 1951, United's Florida Parishes customers were served with gas, a portion of which was produced in Mississippi. Since the loss of a large sale in the Bogalusa area, most—but not all—of the gas to the communities located on the eastern part of the loop originates in Southern Louisiana. The evidence shows that the six communities having short laterals to the Kosciusko line (Port Vincent, Livingston, Doyle, Greensburg, Kentwood and Roseland) are served with gas, part of which is produced in off-shore fields. In addition, gas from this line serves some of the

[2] The Commission found that out of a net flow in the Florida Parishes through United's interstate facilities of 282,759,136 Mcf during the 12 months ended November 30, 1959, 278,933,384 Mcf, of approximately 98.7 per cent, flowed on into Mississippi (R. 838).

communities located on the southern and western part of the loop extending possibly as far east as Slidell. Thus the communities of Amite, Independence, Natalbany, Hammond, Pontchatoula, Madisonville, Mandeville, Abita Springs, Covington and Slidell can receive, and, to some extent do receive service from the Kosciusko line.[2]

"As stated above, the customers on the eastern part of the loop receive gas which is produced principally in onshore southern Louisiana. But they have also received, at times, gas which flowed back across the Mississippi line. Here again it was not possible to determine with accuracy the extent of the backflow in view of the automated nature of United's interstate system. The record also shows that these customers possibly still receive Mississippi produced gas from the north-south line extending to Louisiana and Mississippi and gas flowing westerly from Mississippi in United's Lirette-Mobile line.

"[2] It was impossible for United's Chief Engineer to estimate the extent of the flow from Kosciusko towards Slidell because United's system is automated and gas automatically flows through its interstate lines depending on the pressures in the various lines."

The Commission's Holding

Based on its findings of fact, the Commission concluded that all of United's sales for resale in the Florida Parishes area are in interstate commerce in that "the gas sold is part of a single, uniform stream flowing through United's interstate pipeline from the point of purchase in Louisiana, whether onshore or offshore, to United's customers in other states." Since, in the Commission's words, "the entire gas stream is, in the most literal sense, 'in interstate commerce' ", it held that "the removal of a portion of the gas thus flowing in interstate commerce does not change the gas

removed from the stream into intrastate gas." (R. 834). Re-enforcing the Commission's conclusion was the fact that the transactions under which all of the gas in question is purchased by United from producers is subject to its jurisdiction as sales for resale in interstate commerce. Citing *Phillips Petroleum Corp.* v. *Wisconsin,* 347 U.S. 672 (1954), and the decision of the Fifth Circuit in *Deep South Oil Co.* v. *F.P.C.,* 247 F. 2d 882 (1957), the Commission considered it necessary to assume that once the gas has been sold by the producer to an interstate pipeline, "it had commenced its journey in interstate commerce," notwithstanding that a portion of it might be resold and consumed within the state of production (R. 834). In further support of its conclusion, the Commission pointed to the automated nature of United's pipeline operations, and the fact that the frequency and extent to which the Florida parishes customers received gas from outside the state was dependent on pressure changes along United's lines (R. 836). Finally, the Commission rejected the view that because gas is produced, transported, sold and consumed entirely within the state, it cannot be said to be "in interstate commerce." Noting that the primary purpose of the Act was to "plug the regulatory gap" created by judicial decisions prior to 1938, the Commission construed this pre-legislation gap as one prohibiting the states from regulating wholesales of natural gas while permitting them to control retail sales to local consumers (R. 838-839).

In the interim period between the issuance of Opinion No. 401 on August 26, 1963 and Opinion 401-A on May 11, 1964, in which the Commission denied rehearing, this Court, on March 2, 1964, decided the so-called *Colton* case, *Federal Power Commission* v. *Southern*

California Edison Co., et al., 376 U.S. 205 (1964), rehearing denied 377 U.S. 913 (1964). Interpreting this case as confirming its decision here, the Commission noted that the Court there rejected a case-by-case approach to jurisdictional questions, holding that in enacting the Natural Gas Act and the Federal Power Act, 16 U.S.C. §§ 791a, et seq., Congress had apportioned regulatory power between state and federal governments according to a test which the Court had developed in a series of cases under the Commerce Clause, viz., that a state was prohibited from regulating a sale "at wholesale to local distributing companies" while being allowed to regulate sales at "local retail rates to ultimate consumers." 376 U.S. at 214 (R. 951-952). In further support of its decision, the Commission pointed to additional legislative history not discussed in Opinion No. 401, which, in its view, manifested the intention of Congress to resolve, through the Natural Gas Act, the prevailing confusion over the extent of federal *vis-a-vis* state regulatory power by conferring upon the FPC jurisdiction over all wholesales of gas made from an interstate transmission system (R. 952-954).

The Decision of the Court Below

The Court of Appeals for the Fifth Circuit affirmed the Federal Power Commission's Opinions and Orders. 359 F. 2d 525. Pointing to this Court's holdings in *California* v. *Lo-Vaca Gathering Co.*, 379 U.S. 366, (1965) and *Federal Power Commission* v. *Amerada Petroleum Corp.*, 379 U.S. 687 (1965), "that the mixing of intrastate gas with a substantial portion of interstate gas for pipeline transportation in one commingled stream gave the Commission jurisdiction 'at

the outset over the entire transaction' ", the lower Court concluded that these decisions required that the Commission's orders here be upheld. 359 F. 2d at 528.

STATUTES INVOLVED

Set forth below are the pertinent provisions of the Natural Gas Act, 52 Stat. 821, 68 Stat. 36, 15 U.S.C. §§ 717(b), 717(c), 717a(6), 717a(7), 717c(b):

> Section 1(b). The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.
>
> Section 1(c). The provisions of this Act shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission. The matters exempted from the provisions of this Act by this subsection are hereby declared to be matters primarily of local concern and subject to regulation by the several States. A certification from such State commission to the Federal Power Commission that such State commission has regulatory jurisdiction

over rates and service of such person and facilities and is exercising such jurisdiction shall constitute conclusive evidence of such regulatory power or jurisdiction.

Section 2(6). "Natural-gas company" means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

Section 2(7). "Interstate commerce" means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States.

Section 4(b). No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

Petitioners advance two principal reasons why this Court should review the decision of the Fifth Circuit. First, they argue that unique factual circumstances here raise a significant question as to the Commission's jurisdiction which should be decided by this Court. Second, they say that the rulings of the Commission and the Court below conflict with prior decisions of this Court and the Courts of Appeals. An examination of their Petitions shows that these contentions are without merit, and that Petitioners have failed to set

forth any other special and important reasons why this Court, in the exercise of its sound judicial discretion, should grant certiorari. (Rule 19(1)).

The Jurisdictional Question Has Been Foreclosed by This Court

The jurisdictional question the Court is asked to review is neither factually nor legally complex. Natural gas, produced in the State of Louisiana is sold by producers under certificates issued by the Commission, to United, an interstate pipeline company and a natural gas company regulated by the Commission. Upon delivery into its lines, United transports this gas through its interstate pipeline facilities and sells it to local distributors for resale and distribution. These wholesales by United are typical of the sales regulated by the Commission, and Petitioners do not dispute the Commission's power to regulate them once the gas has been transported by United beyond Louisiana. If before the gas reaches the state line, however, it is sold by United for resale and consumption within Louisiana, Petitioners contend that the wholesale is a sale in intrastate commerce subject to the jurisdiction of that State.

Accepting, *arguendo,* Petitioners' assertion that the precise factual situation is one of first impression, there can be no serious doubt of the Commission's jurisdiction here in the light of the Court's recent rulings as to the reach of that Agency's statutory power. While both Petitioners have chosen to ignore the recent *Colton* Case, *supra,* that decision is plainly dispositive of the question at bar. True, the facts there involved sales for resale of electric energy generated outside the state. But the Court did not turn its decision on this narrow point. It instead addressed itself to the broad spectrum of jurisdictional problems arising under the

Federal Power and Natural Gas Acts in order to clarify once and for all the line of demarcation between state and federal regulation of the sale of electricity and natural gas. This is so from the very manner by which this Court reversed the holding of the lower Court. The Court of Appeals for the Ninth Circuit, in reversing the Commission's Order determining it had jurisdiction, ruled just as Petitioners argue here, that under the circumstances of the case, the sale was entirely local in nature, that there was a "complete lack of interest on the part of any other state," and that the sale was one which a state was permitted to regulate under the Commerce Clause. If, as Petitioners here urge, the physical circumstance of actual interstate transmission of energy is the *sine qua non* of federal jurisdiction, the Court would necessarily have seized on the Ninth Circuit's disregard of this fact in *Colton* and reversed on that basis alone. It did not do so. Instead, premising its decision on an exhaustive review of the legislative and judicial histories of both the Federal Power and Natural Gas Acts, this Court ruled that the Court of Appeals, by relying on an analysis of the local character and impact of the particular sale, had erroneously ignored the test adopted by Congress from a line of cases decided by the Supreme Court prior to the enactment of these Acts.

Tracing this line of decisions in *Public Utilities Comm. of Kansas* v. *Landon,* 249 U.S. 236; *Pennsylvania Gas Company* v. *Public Service Comm.,* 252 U.S. 23; *Missouri ex rel. Barrett* v. *Kansas Natural Gas Company,* 265 U.S. 298; and *Public Utilities Comm. of Rhode Island* v. *Attleboro Steam & Elec. Co.,* 273 U.S. 83, the Court observed that it was the *Attleboro* Case which figured prominently in Congressional debates

and reports, and directly led to the intervention of Congress. Referring to its post legislation decision in *Illinois Natural Gas Co.* v. *Central Illinois Public Service Co.*, 314 U.S. 498, the Court in *Colton,* said that Congress had rejected the flexible case by case test developed in a collateral line of decisions, requiring the analysis of the particular characteristics of the sale and its relationship to, and effect on the national interest in commerce. Instead, the Court stated, 376 U.S. at 214:

> "What Congress did was to adopt the test developed in the Attleboro line which denied state power to regulate a sale 'at wholesale to local distributing companies' and allowed state regulation of a sale at 'local retail rates to ultimate consumers.' 314 U.S. at 504, 62 S.Ct., at 386, 86 L.Ed. 371."

Quoting from *Panhandle Eastern Pipe Line Co.* v. *Public Service Commission*, 332 U.S. 507, 517, construing Section 1(b) of the Natural Gas Act, the Court described the statutory test as "clear and complete", and one which cuts "sharply and cleanly between sales for resale and direct sales for consumptive uses . . . [with] . . . [n]o exceptions . . . made in either category for particular uses, quantities or otherwise." By this wholesale-retail test, the Court concluded, ". . . Congress meant to draw a bright line easily ascertained, between state and federal jurisdiction . . ." which makes unnecessary a case by case analysis of other considerations such as those made by the Ninth Circuit. 376 U.S. at 214, 215, 84 S.Ct. at 651.

It cannot be gainsaid that under Petitioner's jurisdictional theory the line painted by the Court in *Colton* would be neither bright nor easily ascertained. Besides

Louisiana, other numerous gas producing states such as Mississippi, Texas, Oklahoma, New Mexico, Kansas, and California, among several others, would be vested with power to regulate a considerable number of wholesales made from interstate pipeline facilities. That such states would be motivated to exercise this power in a manner detrimental to federal regulation is made abundantly clear by the statement of the Louisiana Commission at pages 5 and 6 of its Petition:

> "The exercise of federal jurisdiction is often buttressed by, indeed, predicated upon, the fear of discrimination against interstate consumers by various means and methods, e.g., higher interstate rates due to lower intrastate rates; local selectivety of local sellers or buyers; improper allocation of resources to local needs. The Louisiana Commission is concerned about discrimination against Louisiana citizens due to federal regulation by a federal body which is further removed from the local scene. It is interested in Louisiana citizens paying no more for their home-produced gas than actual cost plus reasonable profit dictates, and it fears that rates set for interstate users will not include their fair share of the cost proportionate to supplying the gas to such users and that consequently, rates in Louisiana will be higher than justified by the actual proportionate cost required to supply Louisiana users."

Having been told all this, the Court need look no farther than the facts of this case to see how this state-afforded protection to consumers of home-produced gas would affect federal regulation of an interstate pipeline's operation. As the Commission found, the intrastate rate set by the PSC for the sale of gas in the disputed area is nearly nine cents per Mcf lower than the FPC rate applicable in United's Jackson sales zone,

which encompasses both the Florida Parishes and the area in Mississippi served by Willmut. Finding that the applicability of the lower Louisiana intrastate rate would result in a revenue loss of $304,000 annually to United, the Commission stated (R. 836):

> "Our conclusion that these sales are in interstate commerce reflects the substantial impact sales such as those in dispute here can have on United's interstate operations. The gas used in making such sales is purchased by United, under producer rate schedules subject to FPC jurisdiction, for its overall system supply without distinguishing between the Louisiana markets and the out-of-state markets. There is also an inter-relation between the rates for these sales in Louisiana and United's sales outside the state, for if Louisiana sets rates that are too low, and United's return is consequently reduced, its capital costs may rise. Increased capital costs would normally be reflected in higher interstate rates." (fn. omitted).

Besides causing higher interstate rates, of course, a state's establishment of a lower intrastate rate would create the very discrimination which Section 4(b) of the Act is designed to prevent. That Section prohibits a natural gas company from charging "any unreasonable difference in rates, charges, services, facilities, or in any other respect, either as between localities or as between classes of service." Yet, as a direct result of the Louisiana Commission's attempted assertion of jurisdiction in this Case, Willmut and Petitioner Louisiana Gas Service Company, distributing and selling gas at retail in geographically adjacent areas, and purchasing the same gas under the same class of service from the same interconnected interstate pipeline facilities would be charged rates differing by nearly nine cents. This differential would bear no relationship to

United's cost of gas, cost of service or other relevant rate making considerations, but would result solely from the conflicting methods and objectives of two regulatory bodies attempting to regulate the same service. Assuming that such a dual system of regulation would be practicable and produce fair and reasonable results, it could hardly be reconciled with the "sharply and cleanly" cut distinction between wholesales and retails of natural gas which the Court repeatedly in *Attleboro, Panhandle* and again in *Colton* has said delineates federal and state jurisdiction.

Petitioners Have Shown No Conflict Between Lower Court Decisions and Rulings of This Court

Petitioners say that the Fifth Circuit improperly relied on the rationale of this Court's rulings in *Amerada* and *Lo-Vaca, supra,* and that its decision conflicts with those cases and *Interstate Natural Gas Co.* v. *Federal Power Commission,* 331 U.S. 682 (1947). The sense of this argument is that these decisions dealt with sales by producers or gatherers of gas not pipelines, and were premised on the gas being transported and sold beyond the state of production whereas here the gas is sold and consumed in the producing state. The distinctions are, of course, correct. But we fail to see how these factual differences make the Fifth Circuit's decision in conflict with these cases. At best Petitioners' arguments merely attempt unsuccessfully to distinguish them as inapposite.

That they are in point and fully support the Fifth Circuit's holding is abundantly clear. These cases, as well as other rulings of the Court in *Phillips Petroleum Co.* v. *Wisconsin,* 347 U.S. 672 (1954); *Natural Gas Co.* v. *Panoma Corp.,* 349 U.S. 44 (1955); *Cities Service Co.* v. *State Corp. Commission,* 355 U.S. 391

(1958); reversing *per curiam,* 180 Kans. 454, 304 P. 2d 528; and *Sunray Oil Co.* v. *Federal Power Commission,* 364 U.S. 137 (1960), stand for the proposition that once a sale of gas is made by a producer to an interstate pipeline company under a certificate issued by the Federal Power Commission, the gas is thus dedicated to interstate commerce, and may not thereafter be sold or diverted from such status by the pipeline company without authority of the Commission until the interstate movement is terminated after a sale of the gas to a person not subject to the Commission's jurisdiction. As the Court said in *Sunray, supra,* 364 U.S. at 156:

> "An initial application of an independent producer to make movements of natural gas in interstate commerce, leads to a certificate of public convenience and necessity under which the Commission controls the basis on which 'gas may be initially dedicated to interstate use. Moreover, once so dedicated there can be no withdrawal of that supply from continued interstate movement without Commission approval . . . .' 360 U.S. at 389 . . . Under a similar act, this Court has held to the same effect as we hold today. Pennsylvania Water & Power Co. v. Federal Power Comm., 343 U.S. 414, 423-424 . . . ."

What the Court obviously means as the "continued interstate movement" is that once dedicated and delivered into interstate transmission facilities the gas continues in its interstate journey until such time as it is sold by the pipeline company and delivered into the facilities of the distributor for local distribution and sale at retail to consumers. Hence, the sales for resale by United at issue here are not sales of "local" or intrastate gas. They are the transactions by which the gas is returned to its "local" or intrastate char-

acter. The sales themselves, however, are sales at wholesale of gas moving in interstate commerce which the Court in *Colton* held are beyond the regulatory power of the state and subject to FPC jurisdiction.

Lower Court Decision Is Consistent With Other Precedents

Petitioner Louisiana Commission relies heavily on *People's Natural Gas Co.* v. *Public Service Comm.*, 270 U.S. 550 (1926) for the proposition that the character of intrastate gas is not altered by its transportation commingled with interstate gas. The *People's Gas* Case was decided long befor the enactment of the Natural Gas Act and concerned not rate jurisdiction, but an order of the Pennsylvania Commission directing People's to continue service at Johnstown which it sought to discontinue because of the expiration of its contract. Although its Johnstown sale was made at wholesale for distribution by another company, the People's Company was essentially local in nature, engaged primarily in the distribution and sale of gas at retail in several other towns and cities in Pennsylvania. While People's owned and produced gas in Pennsylvania sufficient to meet the requirements at Johnstown, it also imported gas from West Virginia, which it purchased at the Pennsylvania line and then commingled with the Pennsylvania produced gas for transportation and sale within the state. The Company argued that this fact put it beyond the jurisdiction of the State Commission. The Supreme Court disagreed, holding that, to the extent that the Company was engaged in interstate commerce through the importation and commingling of West Virginia gas, the Commission's order did not interfere with or affect such commerce.

Distinguishing *People's Gas* on the facts alone, it is clearly inapposite to the situation here. The State

Commission there was not asserting jurisdiction over the rates of an integrated interstate pipeline system, but attempting to protect consumers from the abandonment of service by a local distributor operating entirely within the state and otherwise subject to its jurisdiction. Moreover, the application of the law of that case today is at best questionable because of the intervening passage of the Natural Gas Act. As originally enacted the Act was construed to confer on the FPC jurisdiction over companies such as People's that purchased gas for resale which was imported from other states, notwithstanding that their operations were confined within the state of sale. *Federal Power Commission* v. *East Ohio Gas Co.*, 338 U.S. 464 (1950). Such companies are still subject to Federal jurisdiction except in those instances where they qualify for an exemption under Section 1(c) of the Act (the 1954 Hinshaw Amendment) by showing that their rates and services are subject to state regulation.

That *People's Gas* is not a controlling precedent was recognized soon after the Natural Gas Act was passed. In *Kentucky Natural Gas Corp.* v. *Public Service Commission*, 28 F. Supp. 509 (E.D. Ky. 1939), affirmed *per curiam sub. nom., Public Service Comm. of Kentucky* v. *Kentucky Natural Gas Corp.*, 119 F. 2d 417 (6th Cir. 1941), the Kentucky Commission attempted to assert jurisdiction over wholesales by Kentucky Natural of gas produced in that state. Kentucky Natural operated a pipeline in Kentucky which extended into Indiana. The line was supplied at the east end with Kentucky produced gas and at the other with out-of-state gas. Under ordinary operational conditions, Kentucky Natural secured approximately 70 per cent of its entire supply in Kentucky, made about 30 per cent of its sales within that state, and ex-

ported substantial portions of Kentucky produced gas to Indiana. Relying on *People's Gas,* the Kentucky Commission contended that in transporting the gas from the fields in Kentucky and selling the gas at wholesale within the state, Kentucky Natural was engaged in intrastate commerce. Distinguishing *People's Gas* as involving a predominantly intrastate business, the Court disagreed. Pointing out that because of the integrated nature of Kentucky Natural's operations "regulation at any one point or control over a single activity would necessarily affect the whole structure," the Court held that the sale of Kentucky produced gas in Kentucky was subject to the Natural Gas Act, stating, 28 F. Supp. at 513:

> "The established course of business being predominantly interstate, the mere fact that some gas from the interstate stream is sold and delivered in the state of its origin affords that state no superior power to regulate or control the transactions."

CONCLUSION

This Court pointed out in *Lo Vaca* that were allocations of gas from a particular source of an interstate pipeline's supply to a particular use permissible, "havoc would be raised with the federal regulatory scheme, as it was construed and applied in *Phillips Petroleum Co.* v. *Wisconsin,* 347 U.S. 672." 379 U.S. at 369-370. In the Court's view, an "attractive gap" would be created

> ". . . which the producing states might have little incentive to close, since the gap would often involve either lower costs to intrastate customers or else merely higher pipeline costs which ultimately would be reflected in rates paid by consumers in other states." 379 U.S. at 370.

There can be no doubt that the Court's acceptance of Petitioners' jurisdictional theory here would create an equally attractive gap. It would open the door for

Louisiana and numerous other producing states to allocate substantial supplies of gas moving in interstate commerce for use within those states and permit them to regulate wholesales of such gas for the sole benefit of consumers in those states. In short, it would enable a state, through its regulation of a pipeline's wholesales, to accomplish the very thing which this Court, in *Lo-Vaca* and *Amerada,* said could not be done through state regulation of a producer's sale to the pipeline. That the exclusion of such wholesales from federal regulation is not contemplated by the Natural Gas Act is clear from the plain language of the statute and this Court's numerous decisions construing it.

It is submitted that the petitions for a writ of certiorari should be denied.

Respectfully,

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